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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,497	03/15/2004	Dirk Bartels	41963-8001.US01	1853
22918	7590	11/28/2007		
PERKINS COIE LLP P.O. BOX 2168 MENLO PARK, CA 94026			EXAMINER RICHMAN, GLENN E	
			ART UNIT 3764	PAPER NUMBER
			MAIL DATE 11/28/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. ##	Applicant(s)	
	10/801,497	BARTELS, DIRK	
	Examiner Glenn Richman	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-55 is/are pending in the application.
- 4a) Of the above claim(s) 1-9 and 36-50 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-35 and 51-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Claims 1-9, 36-50 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 9/10/07.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 10-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Nelson.

Nelson discloses a memory for storing instructions (col. 3, lines 64 - et seq.) and statistical data relating to exercises (col. 3, lines 64 - et seq.); a user interface for allowing the user to select from a plurality of programs, workouts and allowing the user to select from a plurality of exercises within each workout (claim 14); and a display for providing to the user a set of instructions based on the user selections (col. 3, lines 64 -

et seq.), wherein each of the sets of instructions comprises at least one of audio and visual data (col. 3, lines 64 - et seq.).

As for claims 11, 12, Nelson further discloses the visual data includes a text message of instructions (col. 5, lines 65 - et seq.), the visual data includes a video image (col. 3, lines 64 - et seq.), a housing (fig. 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13, 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson in view of Thomas.

Nelson does not disclose the visual data includes a video clip of the selected exercise being performed.

Thomas discloses the visual data includes a video clip of the selected exercise being performed (col. 3, lines 31-41).

It would have been obvious to use Thomas' video clips with Nelson's device, as it is well known as taught by Thomas, to use video clips, for displaying to an exerciser images of an exercise to be performed.

Thomas discloses audible instructions for performing the user selected exercise include a number of sets and repetitions (col. 3, lines 59 - et seq.) and a display for displaying real time instructions (col. 6, lines 51 - et seq.). It would therefore be obvious

for Thomas to display "text" instructions, for providing a user written instructions of the exercises to be performed.

Thomas further discloses instructions for performing the user selected exercise includes a time duration of the user selected exercise (col. 3, lines 60 - et seq.).

Nelson discloses the user interface allows the user to enter information (fig.1) and a housing (fig.1).

Thomas further discloses an external computer may be connected to the portable interactive device (col. 7, lines 1- et seq.).

Thomas further discloses a processor (502); a memory for storing a set of instructions relating to a plurality of activities (504); a user interface for allowing the user to select from a plurality of activities (505); and a display for providing to the user a set of instructions based on the user selected activity (col. 6, lines 51 - et seq.).

Claims 14, 15, are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson

Nelson does not specifically disclose an audio interface wherein the audio interface plays the audio data that is comprised of audio instructions for performing the user selected exercise. However as Nelson does disclose playing the audio data that is comprised of audio instructions for performing the user selected exercise, it would be obvious to use an interface, for transmitting the audio data.

Nelson further discloses the video data and audio data are simultaneously played (col. 10, lines 45-52).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 20-35, 51-55 are rejected under 35 U.S.C. 102(b) as being anticipated by Thomas et al.

Thomas et al disclose a housing configured to be carried by the user (col. 6, lines 15 - et seq.); a display for displaying information to the user (509); a memory for storing data relating to programs (506), workouts, exercises and user inputted data; an interface operable by the user to select and input data (505); and a processor in communication with the display (502), the interface, and the memory operable to control the display and to control the storage and retrieval of data from the memory (col. 6, lines 51 - et seq.), the user selects one program from a plurality of stored programs (col. 5, lines 34 - et seq.), a user selects one workout from a plurality of workouts within the selected program (col. 5, lines 34 - et seq.), the user selects one exercise from a plurality of exercises within the selected workout (col. 5, lines 34 - et seq.), the user may select instructions relating to performing the selected exercise (col. 5, lines 34 - et seq.), the user may select a plan relating to a number of repetitions to perform of the selected exercise (col. 5, lines 34 - et seq.), the user may input the actual number of repetitions performed (col. 5, lines 34 - et seq.), a heart-rate monitor is attached to the device to monitor the body of the user (510), an audio output connection is provided (530), the user input number of repetitions is stored in the memory (col. 3, lines 59 – et

seq.), the device is connected to an external computer (col. 7, lines 1- et seq), the device is connected to an Internet website (col. 6, lines 34- et seq), the user interacts with the Internet website (col. 6, lines 34- et seq), the programs, workouts and exercises are shown on the display (col. 6, lines 51 - et seq.), a communications interface that allows the portable interactive device to communicate with an external computer (503); the user selects one program from a plurality of stored programs (225), a user selects one workout from a plurality of workouts within the selected program (225), the user selects one exercise from a plurality of exercises within the selected workout (col. 5, lines 34 – et seq.), the user may select instructions relating to performing the selected exercise (col. 5, lines 34 - et seq.).


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glenn Richman whose telephone number is 571-272-4981. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on (571)272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Glenn Richman
Primary Examiner
Art Unit 3764